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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,389	07/30/2003	Joseph Palumbo	MBT-121-A	8348

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EXAMINER

SLACK, NAOKON

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,389

Applicant(s)PALUMBO ET AL. *ST***Examiner**

Naoko Slack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/8/2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Amendment

Applicant's Preliminary Amendment received December 8, 2003 has been entered.

Foreign Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on June 13, 2003. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

Applicant's IDS received December 8, 2003 has been entered; however, the second document listed under Non-Patent Literature has not been considered, as this document lacks a publication date.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stiffening channels of claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings must be numbered in consecutive Arabic numerals starting with number 1, each number located at top and central of each page but not within the margin.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because the specification fails to describe the following structural elements which are numbered in the drawings: 26, Figure 1 and 62, Figure 4. Appropriate correction is required.

Claim Rejections – 35 USC 102

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13, 14, and 17 are rejected under 35 USC 102(b) as being clearly anticipated by US Patent 5,203,132 to Smolik.

Claim 13:

Smolik discloses a stud wall framing kit of a predetermined wall section, including a predetermined number of elongate framing studs (6, Figure 1), the predetermined number being at least the number of framing studs required for framing the unassembled components for framing a predetermined wall section using a predetermined stud spacing; and an elongate ceiling track (4 at top of Figure 1) and an

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elongate floor track (4 at bottom of Figure 1) each having channels for receiving ends of the framing studs, at least one of the ceiling track and floor track having a plurality of visible markings (26, Figure 1) along a length thereof at spaced intervals for indicating desired locations for the framing studs.

Claim 14:

Smolik's framing studs and ceiling and floor tracks are arranged substantially parallel to each other.

Claim 17:

Smolik's visible markings are provided on both the ceiling and floor tracks (26 on top and bottom tracks, Figure 1).

Claim Rejections – 35 USC 103

The following is a quotation of 35 USC 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9-12 are rejected under 35 USC 103(a) as being unpatentable over the article by DC Homes, Inc., 2002.

Claim 1:

DC Homes discloses a method of distributing framing materials for a wall section of predetermined dimensions in a kit, the method including the steps of:

(a) providing a plurality of elongate framing studs each having a length

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that is at least sufficient for a height of the wall section (page 1);

(b) providing a plurality of elongate ceiling and floor tracks, each track defining a channel for receiving and securing ends of the framing studs to form the wall section (page 3, paragraph entitled 'Tracks');

(c) selecting, from the plurality of framing studs, at least a number of elongate framing studs required for framing the wall section using a predetermined stud spacing (page 1, last paragraph, "The wall studs used in our package come in a wide range of sizes and thicknesses.");

(d) selecting, from the plurality of ceiling and floor tracks, at least an amount of ceiling and floor track required for the wall section (page 1, paragraph 3: selecting studs and members depends on span lengths and stud spacing); and

(e) securing the selected framing studs and floor and ceiling tracks together unassembled in a transportable bundle (page 6, the kit is delivered to the site).

Claim 9:

DC Homes discloses the step of providing a plurality of instruction sheets providing instructions for assembly of the wall section (page 6, lines 6). It is well known in the art to attach the assembly directions with the kit components.

Claim 10:

The step of providing the bundle to a commercial outlet for sale to an end user is a well known step of merchandising.

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Claim 11:

The steps of acquiring the framing studs and ceiling and floor tracks from a third party supplier, and providing the bundle to the third party supplier is well known in the art as a merchandizing step.

Claim 12:

The step of providing the bundle to a commercial outlet for sale to an end user is a well known merchandising step.

Claims 2-4, 6-8, 15, 16, 18-20 are rejected under 35 USC 103(a) as being unpatentable over DC Homes, Inc. article and US Patent 5,203,132 to Smolik.

Claim 2:

While DC Homes article fails to disclose markings, Smolik discloses a wall assembly with a plurality of visible markings (26, and column 6, lines 26-35) at spaced intervals along a length of at least one of the ceiling and floor tracks for indicating desired locations for the framing studs. In view of Smolik, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide markings on the ceiling and floor tracks to facilitate assembly, as DC Homes is concerned with facilitating installation.

Claim 3:

The visible markings are selected from the group consisting of adhesive stickers, permanent dye, paint, and embossed dimples (Smolik, column 6, lines 32-35).

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Claim 4:

While Smolik discloses the step of providing markings (column 6, lines 32-35), Smolik does not specify the step of providing and using a marking table to apply the markings to the track, such a step would have been an obvious step to one of ordinary skill in the art at the time the invention was made to facilitate measuring off the distance between markings.

Furthermore, it is noted that the step of providing and using a marking table does not further limit the method of distributing framing materials as stated in claim 1, from which claim 4 depends.

Claims 6 and 18:

DC Homes discloses the step of providing a plurality of framing stud fasteners for securing the framing studs to the ceiling and floor tracks, and selecting from the plurality of framing stud fasteners at least a number of framing stud fasteners required to complete the wall section (page 4, entitled 'Screws').

Claims 7 and 19:

While DC Homes does not disclose the step of providing a plurality of wall board fasteners for securing wall board to the wall section, the step to provide fasteners for attaching wall board would have been obvious to one of ordinary skill in the art at the time the invention was made to provide all necessary hardware in a kit, as DC Homes is concerned with facilitating assembly and installation. As stated by Smolik, the wall frame is first constructed and wallboard or sheetrock is then secured to the wall frame to complete the wall (column 1, lines 12-14).

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Claim 8:

While DC Homes fails to disclose the step of providing a plurality of track fasteners for securing the floor and ceiling tracks to support surfaces, such a step would have been obvious to one of ordinary skill in the art at the time the invention was made to facilitate assembly to the structure, as DC Homes is concerned with facilitating assembly and installation.

Claim 15:

DC Homes provides an instruction sheet for the framing kit providing instructions of assembly of the predetermined wall section (page 6, line 6).

Claim 16:

While DC Homes does not specify that the instruction sheet is provided on a wrapper that surrounds a portion of the bundle, such a placement would simplify location of the sheet and therefore facilitate assembly, and DC Homes is concerned with facilitating identification of all kit components (page 2, lines 19-21).

Claim 20:

While Smolik does not disclose that the metal studs are fabricated from steel, DC Homes studs and tracks are light gauge steel (page 1, lines 1-4).

Claim 5 is rejected under 35 USC 103(a) as being unpatentable over DC Homes, Inc. article and US Patent 4,858,407 to Smolik.

Claim 5:

Smolik discloses a plurality of stiffening channels (17, Figure 1)

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for stiffening the wall section. The step of selecting from the plurality of stiffening channels at least an amount of stiffening channel required of the wall section and the step of securing the selected amount of stiffening channel together with the framing studs and floor and ceiling tracks in the transportable bundle would have been obvious to one of ordinary skill in the art at the time the invention was made, as DC Homes is concerned with providing a steel framing kit package for easy identifying and installation" (page 2, lines 19-21).

Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US Patent 6,415,557 to MaCalley discloses panels, studs and fasteners packaged together in a bundle for a shelter kit; three articles by Hexaport International, Ltd. disclose a framing kit comprising pre-cut steel members transported in bundles, fasteners, and instructions.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose telephone number is (703) 305-0315. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm EST). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl D. Friedman can be reached at (703) 308-0839. The fax phone numbers for the organization

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where this application or proceeding is assigned are (703)872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

NS
September 26, 2004

A handwritten signature in black ink, appearing to read 'Naoko Slack', with a long horizontal flourish extending to the right.

Naoko Slack
Primary Examiner